

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.107 OF 2007

IN

NOTICE OF MOTION NO.4777 OF 2006

IN

L.C.NO.2969 OF 2004

WITH

CIVIL APPLICATION NO.157 OF 2007

M/s.Pramukh Development Corporation ...Appellant

Versus

Laxmi Industrial Estate & Ors. ...Respondents

.....

Ms.Sindha Shreedharan for Appellant.

Mr.B.R.Zaveri for Respondent No.1.

Mrs.Geeta Joglekar for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 8, 2007.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Zaveri waives notice for
Respondent No.1. Mrs.Joglekar waives notice for
Respondent No.2.

3. As short question is involved, Appeal is taken up for hearing forthwith by consent.

4. This Appeal takes exception to the Judgment and Order dated 11th January 2007 passed by the Mumbai City Civil Court on Notice of Motion No.4777 of 2006 in L.C.Suit No.2969 of 2004. By the said order, the Trial Court rejected the Application preferred by the Appellant/Plaintiff for restoration of the Suit.

5. After going through the records and the certified copy of the Roznama of the Trial Court produced by the Appellant, I have no hesitation in taking the view that the finding recorded by the Trial Court that no sufficient cause was made out, cannot be sustained. In any case, the Appellant deserves to be given benefit of the confusion which can be discerned from the Roznama and the order passed by the Court on 20th September 2006. No doubt, the Plaint was listed on 18th August 2006 under caption 'for issues'. On that day, however, the same was adjourned to 30th August 2006 as the

Board was discharged. On 30th August 2006, once again, the matter was notified under caption 'for framing of issues'. The order noted on that day by the Court is that the Board was discharged and the Suit was adjourned to 15th September 2006. On 15th September 2006, the matter was once again notified under caption 'for framing issues'. The noting in the Roznama indicates that the Court proceeded on the assumption that the Plaintiff was not interested in the matter, for which reason, directed that the Suit be placed under caption dismissal on 26th September 2006. Interestingly, the matter appeared before the Court on 20th September 2006 but under caption 'for framing issues' as can be seen from the Board at page 101 of the paper-book. The order passed on 20th September 2006 is not part of the Roznama. The Trial Court will have to examine the circumstances in which that order has not been included in the certified copy of the complete Roznama produced by the Appellant. It appears that order was passed on 20th September 2006 that the matter is adjourned to 11th October 2006 for framing of issues. This position can be discerned from the Roznama for 26th

September 2006 itself, on which date, the matter was notified under caption 'dismissal'. The Court initially proceeded to dismiss the Suit for default, but on its own, recalled the earlier order and restored the Suit when it was pointed out by the Sheristedar that the matter was already adjourned to 11th October 2006 under caption 'framing of issues' in terms of order dated 20th September 2006. Accordingly, Suit was then notified on 11th November 2006, when the Board was discharged and the matter was adjourned to 13th November 2006. On 13th November 2006, the matter was notified under caption 'for framing of issues', when, once again, the Board was discharged and the matter stood adjourned to 22nd November 2006. On 22nd November 2006, although the matter was notified under caption 'framing of issues', the Court proceeded to dismiss the Suit for default for the reasons recorded in its order dated 22nd November 2006.

6. Suffice it to observe that the confusion occurred on account of listing of matter on 20th September 2006 and the order passed on that day.

The fact remains that matter was notified on 20th September 2006 and some order came to be passed on that day, which is not part of the Roznama.

7. Be that as it may, as the matter was notified for framing of issues on 22nd November 2006, the Court ought not to have dismissed the Suit for default unless, it was to be notified under caption dismissal on some other day. On this finding, the conclusion reached by the Trial Court that no sufficient cause was made out by the Appellant, cannot be sustained. Accordingly, impugned Judgment and Order deserves to be set-aside.

8. I am not entering into controversy as to whether the Roznama has been tampered or otherwise. It is not necessary for this Court to go into that issue for the reasons already recorded.

9. Accordingly, Appeal succeeds. The impugned Judgment and Order is set-aside. Instead, Notice of Motion No.4777 of 2006 is made absolute.

10. Parties to appear before the Trial Court on 20th March 2007 when the Suit will be listed under caption 'for framing of issues'. The Trial Court may proceed with the hearing of the Suit on its own merits in accordance with law.

11. Appeal and the companion Civil Application stand disposed.

A.M.KHANWILKAR, J.